## Agamben K 5.0

### Link – Constitution

#### If free speech was all we needed to solve our problems, racism would have ended hundreds of years ago. The aff’s reliance on the constitution as the basis for liberty is incoherent as it ignores the constitutions roots in its own suspension and basis for coercion.

Colin Christensen (Emory and Henry College). “Constitutional Regulation, Exception and Anomie: How states of exception inspire functional and moral anomie within the American constitutional system”. No Date. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwiwocK1iqzRAhVO4mMKHUvhDJ8QFgghMAE&url=https%3A%2F%2Fwpsa.research.pdx.edu%2Fpapers%2Fdocs%2FConstitutional%2520Regulation%2C%2520Exception%2520and%2520Anomie\_Christensen\_WPSA.docx&usg=AFQjCNFg0Vo9zVgeaWFS66jYW0WoxdMi2Q&sig2=S22hmphS4T3B2-J\_SlVVfA RC

Within the American constitutional system, **it is axiomatic that a “constitutional right implies the ability to have and effectuate that right.” However,** it is also an accepted principle of constitutional interpretation that **the ability to enjoy** and effectuate **any right guaranteed by the Constitution is neither absolute nor immune from limitation.** In other words, if civil **rights codified within constitutional doctrine are not absolute then the logical contrapositive suggests that these rights are open to certain exceptions.** What remains true of both constitutional protections and their exceptions is their supreme character as foundational legal and theoretical principles to which all other laws and regulatory schemes are subservient. **While the U.S. Constitution stands as the doctrinal manifestation of constituent organization and power, it also functions to inform the collective American psyche of the most basic functional and moral expectations held tantamount within our system of governance.** In so doing, our Constitution can be understood as a codification of the underlying social facts and norms held generally in common within American society. **The Constitution** understood as such becomes not only a positivist contract created by constituent power, but so too, **implicitly establishes certain patterns of political behavior and social interaction that are capable of exerting coercive power over both the government and the individual citizen alike.**

#### It empirically proven that the constitution has molded by the state serve it own interest—courts set precedent to further establish the free market.

Owen M. Fiss 86 (Sterling Professor at Yale Law School). “Free Speech and Social Structure”. Yale Law School Legal Scholarship Repository, 1986. http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2211&context=fss\_papers RC

These cases presented the Court with extremely difficult issues, perhaps the most difficult of all first amendment issues, and thus one would fairly predict divisions. One could also predict some false turns. What startled me, however, was the pattern of decisions: **Capitalism almost always won. The Court decided that a statute that granted access to the print media to those who wished to present differing views was invalid**; that the FCC did not have to grant access to the electronic media for editorial advertisements; that the political expenditures of the wealthy could not be curbed; and that the owners of the large shopping centers and malls that constitute the civic centers of suburban America need not provide access to pamphleteers. **Democracy promises collective self-determination-a freedom to the people to decide their own fate-and presupposes a debate on public issues that is** (to use Justice Brennan's now classic formula) "**uninhibited, robust, and wide-open."** 12 **The free speech decisions of the seventies, however, seemed to impoverish, rather than enrich public debate and thus threatened one of the essential preconditions for an effective democracy. And they seemed to do so in a rather systematic way**.

### Link—Fiat

#### They assume that politics can control the law. This fiction ignores that the sovereign controls it self with the power to create a state of exception clearing the way for genocide.

Anthony Downey 02. “Zones of Indistinction: Giorgio Agamben’s ‘Bare Life’ and the Politics of Aesthetics”. 2002. RC

**“The** ongoing **politicisation of life** today **demands that** a series of **decisions be made about the** delimitation of the **threshold beyond which life ceases to be politically relevant** – where life becomes ‘bare life’. **These thresholds**, moreover, **need to be redrawn from epoch to epoch; so much so that every society modulates the limit of the threshold. The camp was the limit in Nazi Germany** at a particular moment in time; however, as Agamben argues, ‘**every society** – even the most modern – **decides who its “sacred [people]** men” **will be**’ (HS 139). **Politics**, in the context of the camp, **concerned itself with that which was apparently unpolitical** – **‘bare life’ and its abandonment by the political community** – and the implications of this reach beyond the singular abjection of the camps: If this is true, **if the** essence of the **camp consists in** the materialization of the **state of exception** and in the subsequent creation of a space in which bare life and the juridical rule enter into a threshold of indistinction, **then** we must admit that **we find ourselves virtually in the presence of a camp every time such a structure is created, independent of the kinds of crime that are committed there and whatever its denomination and specific topography.** (HS 174)”

### Link—Western Politics

#### Western politics and legal systems are predicated on the state of exception.

Jenny Edkins 2000 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

More than this inclusion by exclusion, **sovereign power** in the West **is constituted by its ability to suspend itself in a state of exception, or ban**: "The originary relation of law to life is not appli- cation but abandonment."15 **The paradox of sovereignty is that the sovereign is at the same time inside and outside the sovereign order: the sovereign can suspend the law. What defines the rule of law is the state of exception** when law is suspended. **The very space in which juridical order can have validity is created and de- fined through** the sovereign **exception.** However, the exception that defines the structure of sovereignty is more complex than the inclusion of what is outside by means of an interdiction.16 **It is not just a question of creating a distinction between inside and out- side: it is the tracing of a threshold between the two, a location where inside and outside enter into a zone of indistinction. It is this state of exception**, or the zone of indistinction between inside and outside, **that makes the modern juridical order of the West possible.**

### Impact—Genocide

#### The state of exception opens up space for the worst atrocities imaginable—the state deems the human as non-human, clearing the way for genocide.

Jenny Edkins 2000 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

**The camp is exemplary as a location of a zone of indistinction.** **Although** in general **the camp is set up** precisely **as** part of **a** state of **emergency** or martial law, **under Nazi rule this becomes not so much a state of exception** in the sense of an external and provi- sional state of danger as **[but] a means of establishing the Nazi state itself. The camp is "the space opened up when the state of exception begins to become[s] the rule."**17 **In the camp, the distinction between** the rule of **law and chaos disappears: decisions about life and death are entirely arbitrary, and everything is possible.** A zone of indistinction appears between outside and inside, exception and rule, licit and illicit. What happened in the twentieth century in the West, and paradigmatically since the advent of the camp, was that the space of the state of exception transgressed its bound- aries and started to coincide with the normal order. The zone of indistinction expanded from a space of exclusion within the nor- mal order to take over that order entirely. **In the concentration camp, inhabitants are stripped of every political status, and the arbitrary power of the camp attendants confronts nothing but what Agamben calls bare life, or homo sacer, a creature who can be killed but not sacrificed.**18 This figure, an essential figure in modern politics, is constituted by and constitu- tive of sovereign power. **Homo sacer is produced by the sovereign ban and is subject to two exceptions: he is excluded from human law (killing him does not count as homicide) and he is excluded from divine law** (killing him is not a ritual killing and does not count as sacrilege). **He is set outside human jurisdiction without being brought into the realm of divine law.** This double exclusion of course also counts as a double inclusion: **"homo sacer belongs to God in the form of unsacrificability and is included in the com- munity in the form of being able to be killed."**19 This exposes homo sacer to a new kind of human violence such as is found in the camp and constitutes the political as the double exception: the ex- clusion of both the sacred and the profane.

#### And, the camp is everywhere—it is ingrained into the very logic of sovereignty such that we are confronted with the camp every single day.

Andrew Robinson 11. “In Theory Giorgio Agamben: the state and the concentration camp”. Cease Fire Magizine, January 7, 2011. <https://ceasefiremagazine.co.uk/in-theory-giorgio-agamben-the-state-and-the-concentration-camp/> RC

**The** Nazi **Holocaust marks a** second **turning point in which the horrors of the camp are revealed** in all their monstrosity. The **Holocaust happened** when and where it did **for contingent**, historical **reasons, but its real causes were the creation of a particular kind of space, the ‘camp’, where people were defined as having lives not worth living**, and as being vulnerable to being killed with impunity. **Auschwitz** is the high point of the logic of sovereignty, showing its ontological nature in its realisation: it **shows where the combination of biopolitics and sovereignty leads**. Auschwitz marks the point of no return which reveals the nature of sovereignty for what it really is. **It** thus **marks the starting point for a new politics.** **This** new politics **is** not just **about** opposing Nazis specifically, but **fighting the logic of sovereignty which generated the Holocaust.** According to Agamben, the camp doesn’t just exist in Nazi Germany, or even in totalitarian regimes. **The camp exists**, potentially at least, **wherever there are states. It is built into the logic of political sovereignty.** It is permanently possible in the spaces of exception which states constantly create. **Whether or not people in these spaces are** actually **killed does not depend on any legal protection** (which is either nonexistent or ineffective), **but entirely on the whims or ethics of the agents of the state who are exercising its sovereign power.** It exists particularly strongly in contemporary states, because the logic of sovereignty has unfolded to a certain point (Agamben seems to think of the changes in the state over time as something akin to a sapling growing into a giant, fully developed tree). Agamben famously claims that the camp is the nomos of modernity – the moment of naming, of recognition and derecognition, which creates the power (and autonomy) of the modern state. **While it is peculiarly modern, the camp also marks the fulfilment of the internal development of sovereignty.**

### Impact—Musselman/V2L

#### The end result of the aff is the Musselman—this is a person whose ontological basis has been reduced to biological existence. They exist only as a body with no will to live.

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The second is a zone of indistinction that appears in some of Agamben's figures of contemporary biopolitics. **The figures that dominate Agamben's analysis**, such as the bandit and homo sacer, **are products of the juridical suspension of the law.** In his account of contemporary biopolitics, however, **Agamben introduces figures such as the** overcomatose Karen Quinlan, who is kept "just alive" through medical interventions, separating her biological life "from the form of life that bore the name Karen Quinlan,"40 and the **Musselman, the inhabitant of the concentration camp who was "giving up and had been given up by his comrades**, (who) **no longer had room in his consciousness for the contrasts good or bad**, noble or base, intellectual or unintellectual. **He was a staggering corpse, a bundle of physical functions in its last convulsions."**41 A figure such as homo sacer is aneu logou, deprived of the way of life in which speech makes sense, "bare life" only from the perspective of the legal order. By contrast, **what is at stake in figures such as the Musselman is not only a juridical abandonment, but an individual reduced by power to the ontological fact of their biological existence.** Ernesto Laclau has criticized Agamben for a confused application of the term zoe, arguing that figures such as the bandit "clearly exceeds" bare life.42 For Laclau, the bandit retains a capacity for antagonistic social practices that is absent from a figure of "pure zoe" such as the musselman, who has been deprived of all agency by power. Laclau is correct to point to this distinction, and to assert that Agamben's use of the term "bare life" is vague. That Agamben himself is cognizant of the distinction between the two levels is, however, illustrated by his assertion that the biopolitics of the Nazi state inscribed a series of caesura in the political body, so that **"the non-Aryan passes into the Jew. The Jew into the deportee, the deportee into the prisoner, until the biopolitical caesuras reach their final limit in the camp. This limit is the Musselmann**... the final substance to be isolated in the biological continuum."43 While the divisions of the juridical order (Jew/deportee/prisoner) have their juridical limit in the camp, which is a space of anomie or exception, **the final limit or biopolitical caesura is the Musselman**, the figure of subjective destitution.

### Bartleby/Play with the Law

#### To “prefer not to” is a means of escaping the dependency of the law. It is not that we try to solve it through the use of another law or right, but rather we exert ourselves as independent of the law all together. This is the inoperativity of the law.

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What is the power of Bartleby’s phrase—‘I would prefer not to’—that it could create such resentment, while absolutely immobilising his employer? In recent years, Bartleby has been depicted as everything from a beautiful soul, who must ‘continuously tread on the verge of suicide’ (Hardt and Negri 2000, p. 302) to a ‘new Christ’ (Deleuze 1998, p. 90). In this paper, I will reflect on the reading offered by Giorgio Agamben, for whom Bartleby’s ‘I would prefer not to’ is ‘the strongest objection against the principle of sovereignty’ (Agamben 1998, p. 48). While understanding this claim will require an examination of Agamben’s reading of Aristotle’s metaphysics, I would like to read Bartleby’s enigmatic formula in the context of his work as a scrivener, a legal scribe. What, I will ask, does the statement, ‘I would prefer not to’ do to the law? What does it mean **to ‘prefer not’** when the law is in question? For Bartleby, it **means**, firstly, **a withdrawal from the work of** copying that makes up the daily routine of **the legal firm** in which he is employed. While, **at first, Bartleby copied ‘by sunlight and candlelight’, he soon ceases his work. He no longer writes—he prefers not to, and he repeats his single formula** in response to all his employer’s requests. ‘It is not seldom the case’, this employer muses, ‘that, when a man is browbeaten in some unprecedented and violently unreasonable way, he begins to stagger in his own plainest faith. He begins, as it were, to vaguely surmise that, wonderful as it may well be, all the justice and all the reason is on the other side’ (Melville 1997, p. 35). In a broader sense then, **Bartleby’s gesture**, in Agamben’s reading, **challenges our faith in the law’s capacity to embody and administer justice.** If Bartleby presents a challenge to the law, however, the nature of this challenge is not easy to categorise. **Bartleby does not copy the law, but neither** does he **oppose it in the name of another law**, a natural law, or a more just law that could be instituted **in its place. He is neither an exemplar of civil disobedience, nor a revolutionary. He does not actively resist; he simply prefers not to.** This, I will suggest, is precisely what draws Agamben to this scribe who has stopped writing. **In Bartleby, Agamben sees an approach to the law that escapes the dialectic of constituent power and constituting power, and makes possible an escape from sovereignty.** While Agamben’s account of sovereign power has been the subject of much critical engagement, his more enigmatic suggestion that the law is in need of fulfilment has received less attention.1 In what follows, I will examine Agamben’s reading of Bartleby, in order to elucidate this unconventionally antinomian aspect of his thought. To do this, I will reflect on the ‘philosophical constellation’ in which Agamben places Bartleby (that of Aristotle’s Metaphysics) and interpret his formula in the context of an examination of a potentiality that is, most importantly, the potentiality of the law.

#### And, to “prefer not to” is a way of opening up space in the law by refusing to give an affirmation or negation of the law. We refuse to re-inscribe the narrative that the law can help us.

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Two key things are at stake in this attempt to assure the actuality of potentiality: **first**ly, **if we are always able to be other than we are, this destabilises the attempt to found state power on the representation of a fixed substantive identity. Second**ly, **the re-potentialisation of the past, by granting possibility to what is or has been, disrupts the tradition, and its codification in law, that is premised on the erasure and forgetting** **of** manifold **un-actualised possibilities**. It is here that Agamben positions Bartleby. **In the formula ‘I would prefer not to’, he sees a liminal zone suspended between affirmation and negation, being and nonbeing, predicated on the renunciation of any will or reason to choose either option.** Thus, **Bartleby**, he argues, **conducts** an experiment in what can either be or not be, **an experiment in potentiality** itself, **which requires the overturning of the principle of the irrevocability of the past**. If conducting such an experiment makes Bartleby a new Messiah, Agamben argues (in what is the most original, if also the least textually grounded aspect of his reading of Melville’s story) this is because it ‘inaugurates an absolutely novel quastio disputata, that of ‘‘past contingents’’’(Agamben 1999, p. 267). Thus while, for Deleuze, Bartleby is ‘the new Christ’ (Deleuze 1998, p. 90), Agamben’s **Bartleby comes** ‘not to redeem what was, but to save what was not’, **to redeem** those broken promises, **unrealised potentials and forgotten struggles that are covered over by tradition and law, by renouncing the copying that presupposes and repeatedly affirms their forgetting** (Agamben 1999, p. 270). Thus, Bartleby, in Agamben’s reading, responds to what in Time That Remains, he terms the ‘messianic modality’—exigency. In exigency, Agamben locates the demand of the forgotten, but this demand is not simply to be remembered and inserted into a new tradition, nor to be frozen in commemoration, but ‘to remain with us and be possible for us in some manner’ (Agamben 2005, p. 41). **The messianic modality**, which Agamben finds in Bartleby, **is thus one in which potentiality does not precede actuality but follows it, restoring it to contingency and enabling the forgotten to act on the present.**

### Framing—Rethinking the Political

#### Any attempt to make political change requires that the we take into account the states power to declare a state of exception. This begins with an analysis of bare life.

Jenny Edkins 2000 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

**This move of biological life to the center of the political scene** in the West **leads to a transformation of the political realm** itself, **one that** effectively **constitutes its depoliticization**. That depoliti- cization takes place side by side with the politicization of bare life. **Bare life is politicized and political life disappears. This irony is explained by the way** the link forged in modernity between **poli- tics** and bare life, a link that underpins ideologies from the right and the left, **has been ignored.** As Agamben says, "if politics today seems to be passing through a lasting eclipse, this is because **politics has failed to reckon with this foundational event of modernity**. . . . **Only a reflection that** . . . **interrogates the link between bare life and politics** . . . **will** be able to **bring the political out of** its **con- cealment**."**20 Any attempt to rethink the political space** of the West **must begin with an awareness of the impossibility of the classical distinction between private life and political existence and exam- ine the zones of indistinction** into which the oppositions that pro- duced modern politics in the West - inside/outside, right/left, public/private - have dissolved. Agamben proposes that "it is on the basis of these uncertain and nameless terrains, these difficult zones of indistinction, that the ways and forms of a new politics must be thought."21 **In the zone of indistinction, a claim to a po- litically qualified life can no longer be effective as such.**

### Framing—Counter Narratives

#### Instead the judge should use their ballot as a means of pushing counter-narratives to unveil and demystify the power of the sovereign—it’s the hope that we have for meaningful change that spills over this debate round. The judge as critical educator has an obligation to question the AC’s operation.

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“In his analysis of biopolitical sovereignty**, Agamben provides us with** what might be **called a counternarrative of Western politics with the** explicitly stated **goal of ‘unveiling’** or ‘unmasking’ **what has become mystified**, hidden, secret or invisible, particularly **with** the prevalence of contractarian accounts of **political power** (1998, p. 8; 2005, p. 88). **Agamben describes this** critical **task in terms of** ‘disenchantment’, or the ‘patient work’ of **unmasking the fiction** or myth **that** covers up and **sustains the violence of sovereignty** (2005, p. 88). **What underlies this urge to demystify** and unveil **is a particular understanding of myth as a** deceptive **narrative naturalizing** and legitimizing **violence in the name of** the preservation of **life.** I use **the** term **‘counternarrative’** to call attention to what Agamben's account aims to do6: This **is a critical analysis**, as Agamben himself insists, **that** does not offer ‘historiographical theses or reconstructions’ but instead **treats** some **historical phenomena as ‘paradigms’** so as **to ‘make** intelligible **a broader historical-problematic context;’** to do this, it proceeds at ‘a historico-philosophical level’ (1998, p. 11; 2009, p. 9). In that sense, **it is not an account that claims historical accuracy** or factual verifiability. This is a crucial point that is sometimes overlooked by Agamben's critics who call into question his inaccurate treatment of historical phenomena such as the concentration camps.7 In addition, ‘counternarrative’ draws our attention to the inventive dimensions of Agamben's endeavor; as one of his critics aptly (though disapprovingly) puts it, ‘Agamben does not discover a concealed biopolitical paradigm stretching back to fourth-century Athens; rather he invents one’ (Finlayson, 2010, p. 116). The invention of **a counternarrative** of Western politics involves literary devices (e.g. hyperbole), which **aim[s] to provoke the readers** and persuade them **to abandon** any **politics centered on modern concepts such as sovereignty, [and] rights** and citizenship (LaCapra, 2007; cf. de la Durantaye, 2009). In analyzing Agamben's account as a ‘counternarrative’, I aim to attend to the goals that it sets for itself. It is these goals – particularly the goal of freeing human potentialities from myths that render the contingent necessary and mask other possibilities – that provide the starting point for my critical engagement with Agamben. Instead of resorting to an ‘outside’ – whether this be an alternative historical account or another theoretical tradition – I aim to read Agamben on his own terms, and suggest that as he tries to free human potentialities from contractarian myths, he might be entrapping them in another myth that ends up casting the contingent as necessary. **Agamben's counternarrative** of Western politics **aims to uncover what has become hidden** or invisible **with ‘our** modern habit of representing the political realm in **terms of** citizens’ **rights**, free will, and social contracts’ (1998, p. 106). Its main target is the contractarian accounts of sovereign power. As he identifies the production of bare life as the originary or foundational activity grounding sovereign power (1998, pp. 6, 83), he particularly aims to question the social contractarian ‘myth’ that covers up sovereign violence (1998, p. 109). After unveiling the foundational myths of Western politics, Agamben concludes that **we cannot effectively respond to** ‘the bloody **mystification of a new planetary order’ if we let these myths continue to obstruct our political imagination** (1998, p. 12). With his counternarrative presenting a catastrophic view of the historical present – a view that emphasizes how **exception has become the rule, camp has become the paradigmatic structure organizing political space, and we have all virtually become homines sacri** (1998, pp. 38, 176, 111) – Agamben aims to convince his readers of the need to think of a ‘nonstatal and nonjuridical politics and human life’ (2000, p. 112). **This new politics requires the renunciation of** concepts associated with sovereignty – for example, **state, rights, citizenship. The** contemporary **predicament cannot be remedied by** a return to **conventional political** categories and **institutions**, Agamben suggests, **since these are deeply involved in the creation of this catastrophe in the first place.** Almost anticipating his critics who would be puzzled by his renunciation of rights and rule of law at a time when the problem of legal dispossession increasingly threatens populations around the world, he explicitly states that the **response to the current** permanent **state of exception cannot consist in confining it within constitutional boundaries and reaffirming** the primacy of **legal norms and rights** (2005, p. 87).8 As legal norms and **rights are ultimately grounded in the originary violence of separating a bare life, legal dispossession is already inscribed in them as an inescapable condition.** Neither the liberal remedy of reasserting the rule of law, nor the Derridean strategy of ‘infinite negotiations’ with a law that is in force without any significance, are viable options (2005, p. 87; 1998, p. 54). Both are futile, if not lethally dangerous, endeavors.9 **The only politically tenable option**, Agamben contends, **is to move out of sovereignty with ‘a complicated** and patient **strategy’ of getting the ‘door of the Law closed forever’** (1998, pp. 54, 55)